IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 18570 of 2007(I)

PETITIONER:

THE BOARD OF DIRECTORS OF THE KUNNATHUNAD TALUK HOUSING CO-OPERATIVE SOCIETY LTD. NO.E.307, PERUMBAVOOR, REPRESENTED BY ITS PRESIDENT O.DEVASSY.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:
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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), ERNAKULAM.

2. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES (VIGILANCE) ERNAKULAM.

3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), ERNAKULAM.

BY SPL. GOVERNMENT PLEADER (SHRI A.G. ANEETHA)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007 ALONG WITH WPC NO. 19153 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) Nos.18570 & 19153 of 2007

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Dated this the 13th day of July, 2007

JUDGMENT

Writ petitions being connected, they are being disposed of by a common judgment.

2. W.P.(C) 18570 of 2007 is filed by the Board of Directors of the Society seeking a direction to the Joint Registrar to issue directions to the Deputy Registrar of Co-operative Societies (Vigilance) to forbear from conducting inspection in the Society since the same is without any authority. Direction is sought against the second respondent from interfering with the functioning of the Society.

3. W.P.(C) 19153 of 2007 is filed seeking to quash Ext.P7 and to declare that the inspection report of the Deputy Registrar (Vigilance), Ernakulam is illegal. Ext.P7 is a notice purportedly issued under Section 32(1) of the Co-operative Societies Act calling upon the petitioners to show cause against proposed supersession under the Section.

4. I heard learned counsel for the petitioners and Special

Government Pleader.

5. It is contended by Sri.V.G.Arun, learned counsel for the petitioners that inquiry and inspection are matters governed by Sections 65 and 66 of the Act read with Rule 66 of the Co-operative Societies Rules. He would submit that going by the decision of this court reported in 1997(2) K.L.T. 85 this court has held that Rule 66 of the Co-operative Societies Rules is mandatory. In that case a learned Single Judge of this court took the view that omission to mention the name of the Officer to conduct the enquiry as required under Section 66(1)(d) is fatal. Dealing with the contention that notice was not sent by registered post, the learned Single Judge of course took note of the fact that it was admitted by the petitioner therein that notice was in fact received and proceeded to hold that it may not be open to the petitioner therein to complain of sending of notice by ordinary post. Sri. V.G.Arun would contend that the inquiry conducted by the Deputy Registrar (Vigilance), Ernakulam is without complying with Rule 66, which has been held to be mandatory. He pointed out that if the officer of the department are allowed to trample upon the requirements of law

and to conduct inquiry, it would result in abuse of power and harassment of Co-operative Societies.

6. The contention of the Government Pleader is that the inspection in question is conducted by virtue of Circular issued by the Government. They are Circular Nos. 40/91 dated 27.12.1991 and Circular No.42/2000 dated 3.8.2000. Going by the Circulars, they contemplates surprise inspection. It is provided in the first Circular that Assistant Registrar should take up surprise inspection of at least three societies in a month. It is pointed out that if the inspection is intended to be a surprise inspection and if the officer is to comply the provisions of Rule 66, it would be a contradiction in terms, for, Rule 66 provides for registered notice to be issued regarding the inspection. She would point out that surprise inspections are necessary for detection of fraud and irregularities in the Co-operative Societies. She would rely on sub section (1) of Section 66, which reads as follows.

> "**66.Supervision and Inspection**.-(1) The Registrar shall supervise or cause to be supervised by a person authorised by him by general or special order in writing in this behalf, the working of every Society as frequently as he

> may consider necessary. The supervision under this sub-section may include an inspection of the books of the society."

Therefore she would contend that there is nothing wrong in the inspection conducted by the Deputy Registrar (Vigilance).

7. Per contra, Sri.V.G.Arun would submit that a perusal of the Circulars issued by the Government would show that they are intended for a different purpose. The purport of the Circulars, according to the learned counsel is that the inspections could lead to action being taken for recovery of the amounts and also for launching criminal action. He would point that inspection reports obtained on the basis of an inspection conducted under the Circulars cannot be pressed into service for initiating action under Section 32. He would submit that inspection can only be under Section 66. He would further contend that the Circulars expressly exclude the powers of the officer thereunder to conduct an inquiry under Sections 65 and 66. He would further contend that it is only on the basis of an inquiry conducted under Section 65, action can be taken under Section 32. He would further contend that under an inquiry or inspection under Section 65 or 66,

there are always safeguards provided under Rule 66. Rule 66(5) also contemplate finalisation of inquiry report with notice to the members under Section 65. Of course when a report is given under Section 65, it may fall into two situations. The report may disclose minor defects or it may disclose major defects. If the report discloses minor defects, it can be cured. If the report discloses major defects, action under Section 32 is contemplated. This would show that it is only in situations covered by action taken under Sections 65 and 66 and read with Rule 66 that action under Section 32 can be taken, he contends.

8. Government Pleader would contend that the contention that there should be action taken under Sections 65 and 66 for taking action under Section 32 is misplaced. She relied on the decision of the Division Bench reported in **State of Kerala v. Sudarsanan** (1997(2) K.L.T. 522). Therein the Division Bench held as follows:

> "The condition precedent for exercising the power under S.32 is that the Registrar on materials placed before him should be satisfied that the grounds mentioned in S.32 exist for supersession of the committee. It is not necessary for this purpose that the Registrar or the Assistant Registrar

> should exercise the powers under Ss. 63, 64, 65 and 66 of the Act. No doubt, in the present case, inquiry was made under S.66 of the Act. Under S.66(5) of the Act, the Registrar can direct the Society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order. But, on inspection, if it is found that the Committee has committed such irregularities or that there has been neglect of the orders issued by the Registrar or that huge losses have been occurred due to the negligence of the committee, it cannot be said that the Assistant Registrar should under S.65 of the Act, direct the Society to cure the defects. If the circumstances are so serious the Assistant Registrar can report the matter to the Registrar to take suitable action individually under S.32 of the Act."

9. This is countered by Sri.V.G.Arun by contending that this was on the basis of Section 32 as it was prior to the amendment. He would submit that having regard to the section as it presently stands, the section may not assist the Government in the contention taken. Relying on Section 32 he points out that action can be taken on the basis of the Registrar being satisfied of the ingredients mentioned therein on the basis of an inquiry conducted either by himself or through his

subordinates or on a report of the financing bank or the Vigilance and Anti-corruption Bureau of the Government or the Vigilance Officer. He would therefore contend that the present Section restricts the power available to the Registrar for arriving at a satisfaction only based on the inquiry report as provided therein. The word inquiry is pressed into service apparently in the context of Section 65, which is a provision providing for inquiry. Therefore he would contend that it is only an inquiry as contemplated under Section 65 of the Act after following the procedure provided for in the rules as well is conducted that supersession can be ordered. However I note that the section also contemplates that the satisfaction mentioned in Section 32 can be arrived at "otherwise" also. Sri. V.G.Arun would contend that if the Registrar is empowered to initiate action on the basis of surprise inspection, it will obviously involve infraction of giving notice. It will lead to abuse of power as it will be open to the Registrar to discriminate between Societies. In one set of cases it will be so open to him to go for an inspection under Section 66 after complying with Rule 66 and in yet another it will be open to him to resort to the practice of

getting a report under the Circular without complying with Rule 66. Therefore he would submit that the argument should not be accepted based on the possibility that the law can be violated and arbitrariness practiced. The second respondent is not an officer appointed under Section 68A of the Act and therefore he cannot conduct an inspection under Section 65, he contends.

10. It is to be noted that surprise inspections are provided for on the basis of Circulars issued by the Registrar of Co-operative Societies. The Registrar of Co-operative Societies is entitled to supervise the functioning of the Society as provided under sub section (1) of Section 66. It cannot therefore be said that there is absence of power to issue Circulars in the matter of supervision of Societies. It is pertinent to note that petitioners have not chosen to challenge the Circulars providing for surprise inspection. Therefore they appear to be done on the basis of the general power which I feel should be available to the department having regard to the object sought to be achieved. Therefore I find no merit in W.P.(C) 18570/2007 and it has only to be dismissed.

11. As far as W.P.(C)19153 of 2007 is concerned, it is to be noted that petitioner challenges Ext.P7 of course mainly on the ground that it is premised on the report of the Deputy Registrar (Vigilance), Ernakulam, who has no authority to conduct the inspection and that at any rate the report of such an officer acting apparently on the basis of Circulars issued cannot be made use of for action under Section 32. As pointed out by learned Government Pleader it is not the law that for taking action under Section 32, there should be an enquiry under Sections 65 and 66 of the Act. Section 32(1) reads as follows:

> **"32. Supersession of Committee**.- (1) If the Registrar, after an inquiry by himself of through his subordinates or on a report of the financing bank, or the Vigilance and Anticorruption Bureau of the Government or the Vigilance Officer or otherwise is satisfied that the committee of any society.---"

It is open to the Registrar to obtain satisfaction in the modes provided for in the earlier portions of the sub section. But more importantly it leaves open the right of the Registrar to act of course on his being satisfied 'otherwise'. When the word 'otherwise' is used, it is not

intended to be redundant or superfluous. The legislature has carefully chosen the same so that it is open to the Registrar to obtain information and materials from any legitimate source. Of course this is not to say that it is a question of subjective satisfaction of the Registrar. Since the legislature has used the word 'satisfied', he has to act bonafide, apply his mind to all relevant facts and can proceed in the matter only when he is satisfied of the existence of any of the elements prescribed for taking action in the said section. I notice that in this case no prejudice is caused to the petitioners. This is for the reason that in Ext.P7 notice the allegations flowing from the report of the Deputy Registrar (Vigilance), which are sought to be made use of against the petitioners are mentioned in the notice. There is a report given by the Deputy Registrar of Vigilance. There were materials obtained on the basis of an inspection conducted under the Circular. Of course that should not be understood as saying I have subscribed to the correctness of the allegations or that they are sufficient to take action under Section 32. They are matters where the Registrar should form a final opinion only after considering the objections and take a decision in accordance with

law.

Accordingly the writ petitions are dismissed.

(K.M. JOSEPH, JUDGE)

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